A

Wjchai Onprom v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO K–05–20 OF 1995

B GOPAL SRI RAM, HASHIM YUSOFF AND TENGKU BAHARUDDIN SHAH JJCA

10 JULY 2006

C *Criminal Law — Dangerous Drugs Act 1952 — s 39B(2) — Trafficking in dangerous drugs — Actual trafficking — Evidence of possession, nature of — Whether possession must be accompanied by overt act on the part of the accused — Whether passive possession sufficient*

D *Criminal Law — Dangerous Drugs Act 1952 — s 39B(2) — Trafficking in dangerous drugs — Actual trafficking — Overt or actual possession — Mens rea possession — How ascertained — Accused's purpose in having drugs in his possession — How such purpose ascertained*

E *Criminal Procedure — Mens rea — Trafficking in dangerous drugs — Mens rea possession — Characteristics of*

F *Criminal Procedure — Trial — Prosecution's case — Opening of — Drug trafficking trial — Whether prosecution ought to disclose at the outset whether it was proceeding on the basis of actual trafficking or presumed trafficking*

G The appellant appealed to the Court of Appeal against his conviction under s 39B(2) of the Dangerous Drugs Act 1952 ('DDA'). The record revealed that the appellant was initially caught with possession of a small packet containing dried leaves in the left pocket of his jacket. A further search upon his person divulged two other packets containing dried leaves, attached to the appellant's 'T' shirt with tape. Subsequent examination by the Government chemist revealed that the packets found on the

H appellant's person contained 1,214g of cannabis. On appeal, counsel for the appellant challenged the evidence of the chemist, arguing that the chemist was unsure whether dried leaves were cannabis or marijuana. Thus, counsel submitted that the prosecution had failed to prove beyond a reasonable doubt that the leaves were cannabis.

I

Held, dismissing the appeal:

(1) The Court of Appeal, having carefully considered the whole of PW3's evidence was satisfied the prosecution had established beyond a reasonable doubt that

the leaves were cannabis. The High Court judge did not misdirect itself on this part of the case (see para 3); *Abdullah bin Yaacob v Public Prosecutor* [1991] 2 MLJ 237 and *Kesavan v Public Prosecutor* [2003] 2 MLJ 209 followed.

(2) It is a requirement of essential justice that an accused should be made aware at the earliest opportunity of the nature of the case he has to meet. In the case of a charge of trafficking, there is a wide range of options open to the prosecution to present its case. It may seek to make out a case of actual trafficking. It may also seek to rely on one or more of the presumptions in s 37(da) of the Act to raise a case of trafficking. However, the court and the accused must be informed at the earliest possible stage as to which option the prosecution seeks to pursue. This will assist the court to focus on the relevant evidence and enable the defence to direct its cross examination on the material points (see para 5); *Public Prosecutor v Mohd Radzi Abu Bakar* [2005] 6 MLJ 393 referred.

(3) In the instant case, the prosecution when opening its case made no reference as to whether it was relying on evidence of actual trafficking or relying upon the presumption under s 37(da) of the Act. The presumption under s 37(da) was merely mentioned in the prosecution's submission at the close of its case. In the instant case the appellant did not suffer any prejudice through this failure on the part of the prosecution. It was clear that counsel for the appellant at the trial focused on the relevant issues and did not appear to have been disadvantaged by prosecution's failure to observe the rule of disclosure (see para 6).

(4) In a case where the prosecution is relying on evidence of possession to prove actual trafficking by having resort to the definition in s 2, such possession must be accompanied by some overt act on the part of the accused to be able to constitute trafficking. Mere passive possession is insufficient to establish a case of actual trafficking (see para 7); *Public Prosecutor v Hairul Din bin Zainal Abidin* [2001] 6 MLJ 146; *Public Prosecutor v Nik Ahmad Aman* [2002] 2 MLJ 641 and *Mohamad Yazri bin Minhat v Public Prosecutor* [2003] 3 MLJ 241 referred.

(5) Where the prosecution relies on possession accompanied by some overt act on the part of the accused as constituting the offence of trafficking, the court is concerned with two questions. First, whether the accused had mens rea possession of the prescribed drug. This is because the word 'possession' appearing in ss 2 and 37(da) of the Act does not connote mere physical possession. Second, the purpose for which he had the proscribed drug in his possession. Although in most, if not all cases, the evidence presented to the court is common to both questions it is nevertheless important to address the two questions (see para 8).

(6) With regard to mens rea possession, the possessor (accused) must be aware of his possession, must know the nature of the thing possessed and must have the power of disposal over it. In deciding the accused's purpose in having the drug in his or her possession, the court must take a common sense approach. This is essentially a question of fact to be inferred from the surrounding circumstances

(see para 10); *Saad Ibrahim v Public Prosecutor* [1968] 1 MLJ 158 and *Ong Ah Chuan v Public Prosecutor* [1981] 1 MLJ 64 foloweld.

(7) In the instant case, the appellant was caught conveying a very large quantity of cannabis from Thailand to Malaysia. In view of the amount involved, it was safe to infer that the drug was intended for a third person or persons, known or unknown. This was not a case of mere passive possession. There were overt acts done by the appellant, namely the active concealment of the drug on his person followed by its conveyance from Thailand into Malaysia which reasonably supports the existence of criminal purpose prescribed by the Act. The very same facts also gave rise to a strong inference that the appellant was aware of his possession, knew the nature of the drug possessed and had the power of disposal over it (see para 11).

(8) No miscarriage of justice was occasioned in this case. Any reasonable tribunal armed with the facts presented to the court in this case would have come to the same as the judge in the instant case (see para 13).

[Bahasa Malaysia summary

Perayu telah merayu ke Mahkamah Rayuan terhadap sabitannya di bawah s 39B(2) Akta Dadah Berbahaya ('ADB'). Rekod menunjukkan bahawa perayu pada mulanya telah ditangkap memiliki bungkusan kecil mengandungi daun kering dalam poket kiri jaketnya. Selepas diperiksa selanjutnya didapati dua bungkusan lain mengandungi daun kering yang dilekatkan pada kemeja 'T' perayu dengan pita pelekat. Pemeriksaan oleh ahli kimia Kerajaan menunjukkan bahawa bungkusan-bungkusan yang ditemui pada perayu mengandungi 1,214g kanabis. Semasa rayuan, peguam bagi pihak perayu mencabar keterangan ahli kimia, dengan berhujah bahawa ahli kimia tersebut tidak pasti sama ada daun kering itu adalah kanabis atau marijuana. Oleh itu, peguam berhujah bahawa pihak pendakwa telah gagal untuk membuktikan melampaui keraguan munasabah bahawa daun-daun tersebut adalah kanabis.

Diputuskan, menolak rayuan tersebut:

(1) Mahkamah Rayuan, setelah menimbangkan dengan teliti keseluruhan keterangan PW3 berpuas hati pihak pendakwa telah membuktikan melampaui keraguan munasabah bahawa daun-daun tersebut adalah kanabis. Hakim Mahkamah Tinggi tidak salah arah dalam bahagian kes tersebut (lihat perenggan 3); *Abdullah bin Yaacob v Public Prosecutor* [1991] 2 MLJ 237 dan *Kesavan v Public Prosecutor* [2003] 2 MLJ 209 diikut.

(2) Adalah keperluan demi keadilan bahawa seorang tertuduh hendaklah sedar pada peluang terawal tentang sifat kes beliau dihadapkan. Dalam kes satu pertuduhan pengedaran, terdapat pilihan luas yang terbuka kepada pihak pendakwa untuk mengemukakan kesnya. Ia boleh memohon untuk membuktikan satu kes pengedaran sebenar. Ia juga boleh memohon untuk bergantung kepada salah satu atau lebih daripada andaian dalam s 37(da) Akta untuk menimbulkan satu kes pengedaran. Namun, mahkamah dan tertuduh

hendaklah memaklumkan pada peringkat seawal mungkin tentang pilihan pihak pendakwa untuk memulakan kes. Ini dapat membantu mahkamah memberi fokus kepada keterangan relevan dan membolehkan pihak pembela mengarahkan pemeriksaan balasnya berhubung perkara-perkara penting (lihat perenggan 5); *Public Prosecutor v Mohd Radzi Abu Bakar* [2005] 6 MLJ 393 dirujuk.

(3) Dalam kes semasa, pihak pendakwa apabila membuka kesnya tidak membuat apa-apa rujukan berhubung sama ada ia bergantung kepada keterangan pengedaran sebenar atau bergantung kepada andaian di bawah s 37(da) Akta tersebut. Andaian di bawah s 37(da) hanya dinyatakan dalam hujah pihak pendakwa di penutup kesnya. Dalam kes semasa perayu tidak mengalami apa-apa prejudis melalui kegagalan di pihak pendakwa. Adalah jelas bahawa peguam bagi pihak perayu dalam perbicaraan telah memfokuskan tentang isu-isu relevan dan tidak kelihatan terganggu oleh kegagalan pihak pendakwa untuk meneliti peraturan pendedahan (lihat perenggan 6).

(4) Dalam satu kes di mana pihak pendakwa bergantung kepada keterangan pemilikan untuk membuktikan pengedaran sebenar dengan merujuk kepada definisi s 2, pemilikan sedemikian hendaklah dibuktikan terdapat tindakan terang-terangan di pihak tertuduh untuk membentuk pengedaran. Pemilikan pasif semata-mata tidak memadai untuk membuktikan satu kes pengedaran sebenar (lihat perenggan 7); *Public Prosecutor v Hairul Din bin Zainal Abidin* [2001] 6 MLJ 146; *Public Prosecutor v Nik Ahmad Aman* [2002] 2 MLJ 641 dan *Mohamad Yazri bin Minhat v Public Prosecutor* [2003] 3 MLJ 241 dirujuk.

(5) Di mana pihak pendakwa bergantung kepada pemilikan yang terdapat tindakan terang-terangan oleh tertuduh sebagai membentuk kesalahan pengedaran, mahkamah meneliti dua persoalan. Pertama, sama ada tertuduh mempunyai mens rea pemilikan dadah berbahaya itu. Ini adalah kerana perkataan 'possession' yang terdapat dalam ss 2 dan 37(da) Akta mempunyai konotasi pemilikan fizikal semata-mata. Kedua, tujuan yang mana beliau mempunyai dadah berbahaya tersebut dalam milikannya. Meskipun dalam kebanyakan, jika bukan dalam semua kes, keterangan dikemukakan ke mahkamah adalah sama dalam kedua-dua persoalan, tidak kurang pentingnya untuk mengemukakan kedua-dua persoalan tersebut (lihat perenggan 8).

(6) Berhubung mens rea pemilikan, pemilik (tertuduh) hendaklah sedar tentang pemilikannya, hendaklah mengetahui sifat bahan yang dimiliki dan hendaklah mempunyai kuasa untuk membuangnya. Dalam memutuskan tujuan tertuduh mempunyai dadah dalam milikannya, mahkamah hendaklah mengambil pendekatan yang diterima akal. Ia merupakan satu persoalan fakta untuk membuat inferens berdasarkan keadaan sekeliling (lihat perenggan 10); *Saad Ibrahim v Public Prosecutor* [1968] 1 MLJ 158 dan *Ong Ah Chuan v Public Prosecutor* [1981] 1 MLJ 64 diikut.

(7) Dalam kes semasa, perayu tertangkap semasa membawa kuantiti besar kanabis daripada negara Thailand ke Malaysia. Berdasarkan jumlah yang terlibat, adalah selamat untuk membuat inferens bahawa dadah tersebut bertujuan untuk pihak ketiga, yang diketahui ataupun tidak. Ini bukan satu kes

pemilikan pasif semata-mata. Perbuatan terang-terangan yang dilakukan oleh perayu, terutamanya penyembunyian aktif dadah tersebut pada badannya diikuti dengan membawanya daripada negara Thailand ke Malaysia menyokong secara munasabah kewujudan tujuan jenayah yang dilarang oleh Akta. Fakta yang sama juga menimbulkan inferens kukuh bahawa perayu sedar tentang pemilikannya, mengetahui sifat dadah yang dimiliki dan mempunyai kuasa membuangnya (lihat perenggan 11).

(8) Tiada kegagalan melaksanakan keadilan berlaku dalam kes ini. Mana-mana tribunal munasabah yang mana telah dikemukakan fakta-fakta ke hadapan mahkamah dalam kes ini akan membuat keputusan yang sama seperti hakim dalam kes semasa (lihat perenggan 13).]

Notes

For cases on mens rea generally, see 5(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 2346–2374.

For cases on prosecution's case, see 5(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 4574–4583.

For cases on s 39B(2) of the Dangerous Drugs Act 1952, see 4 *Mallal's Digest* (4th Ed, 2003 Reissue) paras 448–453.

Cases referred to

Abdullah bin Yaacob v PP [1991] 2 MLJ 237 (folld)
Andy bin Bagindah v Public Prosecutor [2000] 3 MLJ 644 (refd)
Chow Kok Keong v Public Prosecutor [1998] 2 MLJ 337 (refd)
Kesavan v PP [2003] 2 MLJ 209 (folld)
Looi Kow Chai & Anor v Public Prosecutor [2003] 2 MLJ 65 (refd)
Mohamad Yazri bin Minhat v PP [2003] 3 MLJ 241 (refd)
Ong Ah Chuan v PP [1981] 1 MLJ 64 (folld)
PP v Hairul Din bin Zainal Abidin [2001] 6 MLJ 146 (refd)
PP v Mohd Radzi Abu Bakar [2005] 6 MLJ 393 (refd)
PP v Nik Ahmad Aman [2002] 2 MLJ 641 (refd)
Saad Ibrahim v PP [1968] 1 MLJ 158 (folld)

Legislation referred to

Dangerous Drugs Act 1952 ss 2, 37(da)(vi), 39B(2)

Appeal from: Criminal Trial No 45–15 of 1994 (High Court, Alor Setar)

A Pancharam (Mayandi & Panjaram) for the appellant.
Roslan bin Mat Noor (Attorney General's Chambers) for the respondent.

Gopal Sri Ram JCA (delivering judgment of the court):

[1] The appellant was charged, tried and convicted of an offence of trafficking under s 39B(2) of the Dangerous Drugs Act 1952 ('the Act'). He received the mandatory death sentence.

[2] The facts are these. On 24 February 1994, at about 2.45pm, PW4 (Corporal Mohd Fuad bin Jaafar) and five other police personnel were on duty at the check point at the Immigration Complex at Bukit Kayu Hitam. The appellant, a Thai national came to the check point. He was on foot. He had a Thai passport and was seeking to enter Malaysia. He was not carrying anything in his hands. He wore a jacket. PW4 then searched the appellant. This initial search yielded results. A small packet was found in the left pocket of the appellant's jacket. It contained dried leaves which PW4 suspected to be cannabis. The appellant was then taken to the police booth where a second search of his person was conducted. The appellant was found to be wearing three layers of clothing. This second search also yielded results. Two other packets were found. They were attached by cello tape to the appellant's 'T' shirt. These two packets also contained dried leaves. Subsequent examination by the Government chemist revealed that the packets found on the accused's person contained 1,214g of cannabis. The appellant was, as we have already said, charged with trafficking this proscribed drug and convicted of that offence.

[3] Before us, the conviction was challenged on the ground that the evidence of the chemist (PW3) was unsatisfactory and suspect. It was submitted that PW3 was unsure whether the leaves in question were cannabis or marijuana. It was further submitted that the prosecution, on the basis of PW3's evidence had failed to prove beyond a reasonable doubt that the leaves were cannabis. In his response, the learned deputy took us through PW3's evidence in some depth and demonstrated that this witness had not said that Indian hemp and cannabis was the same thing. All that PW3 had said was that as far as he was concerned the two terms were synonymous. The learned judge accepted the chemist's evidence and found the drug in question to be cannabis. Having carefully considered the whole of PW3's evidence, we were satisfied the prosecution had established beyond a reasonable doubt that the leaves were cannabis. That is all that the law requires. See, *Abdullah bin Yaacob v Public Prosecutor* [1991] 2 MLJ 237; *Kesavan v Public Prosecutor* [2003] 2 MLJ 209. Accordingly we are satisfied that the learned judge did not misdirect himself on this part of the case.

[4] Although the appeal was confined to the attack on the chemist's evidence, we took the precaution of carefully scrutinising the evidence on record and the judgment of the learned judge to ensure that the appellant's conviction was safe. In his judgment the learned trial judge, after a careful summary of the evidence correctly took the view that on the facts established it was not necessary for the prosecution to rely on the presumption under s 37(da)(vi) as this was a case of actual trafficking. There is however an observation we would make on a point of some importance.

[5] Hearkening to fundamentals, it is a requirement of essential justice that an accused should be made aware at the earliest opportunity of the nature of the case he has to meet. In the case of a charge of trafficking, there is a wide range of options open to the prosecution to present its case. It may seek to make out a case of actual trafficking. Or it may seek to rely on one or more of the presumptions in s 37(da) of the Act to raise a case of trafficking. But the court and the accused must be informed at the earliest possible stage as to which option the prosecution seeks to pursue. This will assist the court to focus on the relevant evidence and enable the

A defence to direct its cross examination on the material points. We would in this context mention the very recent decision of the Federal Court in *Public Prosecutor v Mohd Radzi Abu Bakar* [2005] 6 MLJ 393 where the following observation was made (at pp 407–408):

B > Trial judges and defence counsel are most often left guessing until the very end of the tial as to whether the prosecution is relying on direct evidence to prove trafficking or whether they seek to rely on the presumption under s 37(d) or s 37(da) of the Act.
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> In our view, the problem is easily solved by the prosecution intimating to the defence and to the court at the first available opportunity if its case is one of actual trafficking or if it intends to rely on a presumption to establish trafficking and, if the latter be the case, to identify the precise presumption. This could be done either before the commencement of the trial or as part of the opening speech and would go a long way in assisting the defence in directing its cross examination along appropriate lines and thereby avoiding a waste of the court's time. See, *Public Prosecutor v Chia Leong Foo* [2000] 6 MLJ 705, applying *Public Prosecutor v Okonkwo & Anor* [1993] 3 SLR 610.

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[6] In the present case, the statement of facts tendered by the prosecution in lieu of the usual opening statement makes no reference as to whether the prosecution is relying on evidence of actual trafficking or relying upon the presumption under s 37(da) of the Act. The very first time you find mention of it is in the prosecution's E submission at the close of its case. We emphasise that it is contrary to the principles of essential criminal justice to permit the prosecution to meander at will and then, at some point convenient to it, to try and pigeonhole the facts adduced into one or more of the provisions in the Act. If in an appropriate case such a course occasions a miscarriage of justice this court will have no choice but to intervene and quash the conviction as being unsafe. However, in the instant case it is fortunate that the F appellant did not suffer any prejudice through this failure on the part of the prosecution. For it is clear from the notes of evidence recorded by the learned judge, that counsel for the appellant at the trial focused on the relevant issues and does not appear to have been disadvantaged by prosecution's failure to observe the rule of disclosure.

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[7] Because of the way in which the case was tried and argued in the court below, we think it apposite to re-state the law on the subject of actual trafficking of drugs. In a case where the prosecution is relying on evidence of possession to prove actual trafficking by having resort to the definition in s 2, such possession must be H accompanied by some overt act on the part of the accused to be able to constitute trafficking. See, *Public Prosecutor v Hairul Din bin Zainal Abidin* [2001] 6 MLJ 146; *Public Prosecutor v Nik Ahmad Aman* [2002] 2 MLJ 641; *Mohamad Yazri bin Minhat v Public Prosecutor* [2003] 3 MLJ 241. In other words, mere passive possession is insufficient to establish a case of actual trafficking.

I

[8] Where the prosecution relies on possession accompanied by some overt act on the part of the accused as constituting the offence of trafficking, the court is concerned with two questions. First, whether the accused had *mens rea* possession of the proscribed drug. This is because the word 'possession' appearing in ss 2 and 37(da) of the Act does not connote mere physical possession. Second, the purpose for

which he had the proscribed drug in his possession. Although in most, if not all cases, the evidence presented to the court is common to both questions it is nevertheless important to address the two questions.

[9] Take the first question. In *Saad Ibrahim v Public Prosecutor* [1968] 1 MLJ 158at p 159, Yong J explained what is meant by 'mens rea possession':

> In my opinion mere possession is one thing and possession with *mens rea* is another. Possession which incriminates must have certain characteristics. The possessor must be aware of his possession, must know the nature of the thing possessed and must have the power of disposal over it. Without these characteristics possession raises no presumption of mens rea. Without mens rea possession cannot be criminal except in certain cases created by statute, which is not applicable in this case.

This test of *mens rea* possession has been repeatedly applied by our courts, and very recently by the Federal Court in *Public Prosecutor v Mohd Radzi Abu Bakar*.

[10] Now take the second question. The court must take a commonsense approach when deciding the accused's purpose in having the drug in his or her possession. This is essentially a question of fact to be inferred from the surrounding circumstances. In *Ong Ah Chuan v Public Prosecutor* [1981] 1 MLJ 64, Lord Diplock when commenting of the equipollent provisions of the Singapore Misuse of Drugs Act 1973 made observations which our courts have held apply with equal force here. See, *Chow Kok Keong v Public Prosecutor* [1998] 2 MLJ 337; *Looi Kow Chai & Anor v Public Prosecutor* [2003] 2 MLJ 65. When referring to the definition of 'trafficking' in the Singapore Act, Lord Diplock said:

> This is a very wide description of acts that may be treated as equivalent to the substantive offence of trafficking; nevertheless, in their Lordships' view, it is clear from the structure of the Drugs Act and the distinction drawn between the offence of having a controlled drug in one's possession and the offence of trafficking in it, that mere possession of itself is not to be treated as an act preparatory to or in furtherance of or for the purpose of trafficking so as to permit the conviction of the possessor of the substantive offence. To bring the provisions of sections 10 and 3(c) into operation some further step or overt act by the accused is needed, directed to transferring possession of the drug to some other person; and it is a consequence of the clandestine nature of the drug trade and the means adopted for the detection of those engaged in it, that the further step that the prosecution is most likely to be able to prove in evidence is the act of the accused in transporting the drug to some place where he intends to deliver it to someone else, whether it be the actual consumer or a distributor or another dealer.
>
> Proof of the purpose for which an act is done, where such purpose is a necessary ingredient of the offence with which an accused is charged, presents a problem with which criminal courts are very familiar. Generally, in the absence of an express admission by the accused, the purpose with which he did an act is a matter of inference from what he did. *Thus, in the case of an accused caught in the act of conveying from one place to another controlled drugs in a quantity much larger than is likely to be needed for his own consumption the inference that he was transporting them for the purpose of trafficking in them would, in the absence of any plausible explanation by him, be irresistible — even if there were no statutory presumption* such as is contained in section 15 of the Drugs Act.
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> As a matter of common sense the larger the quantity of drugs involved the stronger the inference that they were not intended for the personal consumption of the person carrying

A them, and the more convincing the evidence needed to rebut it. All that section 15 does is to lay down the minimum quantity of each of the five drugs with which it deals at which the inference arises from the quantity involved alone that they were being transported for the purpose of transferring possession of them to another person and not solely for the transporter's own consumption. There may be other facts which justify the inference even where the quantity of drugs involved is lower than the minimum which attracts the
B statutory presumption under section 15. In the instant cases, however, the quantities involved were respectively one hundred times and six hundred times the statutory minimum.

Whether the quantities involved be large or small, however, the inference is always rebuttable. The accused himself best knows why he was conveying the drugs from one place to another and, if he can satisfy the court, upon the balance of probabilities only that they were destined for his own consumption he is entitled to be acquitted of the offence of
C trafficking under section 3. (Emphasis added.)

[11] Now, adopt a similar approach to the present case. Here the appellant was caught conveying a very large quantity of cannabis from Thailand to Malaysia. In view of the amount involved, it is safe to infer that the drug was intended for a
D third person or persons, known or unknown. That other person or persons may, to borrow Lord Diplock's words, be 'the actual consumer or a distributor or another dealer' So this is not a case of mere passive possession. There were overt acts done by the appellant, namely the active concealment of the drug on his person followed by its conveyance from Thailand into Malaysia which reasonably supports the existence of criminal purpose proscribed by the Act. We may add that the very same facts also
E give rise to a strong inference that the appellant was aware of his possession, knew the nature of the drug possessed and had the power of disposal over it. So much for the *prima facie* proof of actual trafficking.

[12] In his unsworn statement from the dock the appellant sought to rebut the inference raised by the prosecution's evidence. He denied any knowledge of the
F contents of the packages. So the issue of fact that the learned judge had to decide was whether the appellant knew of the contents of the packages. The learned judge after a careful consideration of the appellant's unsworn statement held that it did not raise a reasonable doubt in his mind. In short, he rejected the assertion of lack of knowledge. This is a finding of fact based on credibility and is a matter on which we as an appellate court must defer to the views of the learned judge. See, *Andy bin*
G *Bagindah v Public Prosecutor* [2000] 3 MLJ 644.

[13] Having read and re-read the record of appeal, we are satisfied that no miscarriage of justice was occasioned in this case. In our judgment, any reasonable tribunal armed with the facts presented to the court in this case would have come to
H the conclusion at which the judge arrived at in this case. The conviction of the appellant on that charge is accordingly safe.

[14] For the reasons already given, the appeal was dismissed and the conviction and sentence affirmed.

Appeal dismissed.

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Reported by John Paul Simon